

# CAR PARTS LTD.

## GENERAL TERMS AND CONDITIONS OF "SALE & DELIVERY".

### DEFINITIONS

1. In these General Terms and Conditions of "Sale & Delivery" ("Terms and Conditions"):

(I) "The Company" means Car Parts Ltd (a limited liability company to registered under the laws of Malta by means of number C-49942 ), having its registered address at Warehouse No.16, Hard Rocks Industrial Park, Burmarrad Road, NXR 6345 Naxxar, MALTA;

(II) "The Buyer" means the purchaser of goods from the Company.

(III) "Goods" means the articles or goods to which this document relates.

### GENERAL

2. All orders are accepted and all contracts are made subject to the following "Terms and Conditions" provided that any special conditions of the Company in any quotation or contract shall prevail to the extent that they are inconsistent with the following "Terms and Conditions".

3. A quotation of the Company does not constitute an offer by the Company to sell or supply goods and every acceptance of any quotation of the Company and every order by the Buyer is and shall be deemed to be an offer by the Buyer to the Company and does not and shall not bind the Company unless and until the Company gives its written acknowledgement of the order. If the Company's "Terms and Conditions" (whether special or general) are at or appear to be at variance or inconsistent with any conditions of the Buyer then the Company's "Terms and Conditions" shall and shall be deemed to prevail and be effective.

4. No variation or purported variation of a term of this or any contract shall bind the Company unless first agreed in writing and signed by a Director of the Company. After an order has been acknowledged by the Company the Buyer may not cancel the order or any part thereof without the prior written consent of the Company. The Company shall be entitled to invoice the Buyer for all and any damages occasioned by cancellation, including loss of profit, occasioned by cancellation including administrative and other expenses. The Buyer shall not be entitled to challenge the amount quoted by the Company as damages and such quoted amount shall be a certain, liquid and due debt owed by the Buyer to the Company. In this manner, the Company may set-off, wholly or partially such debt against any deposits/down payments which may have been effected

by the Buyer. Such set-off would be without prejudice to any other remedy pertaining to the Company against the Buyer as per contract and/or as per law.

## **TECHNICAL SPECIFICATIONS**

5. Except as required by law, the Buyer shall not disclose any of the terms or conditions of an accepted order to any third party. All specifications, drawings, illustrations, photographs, catalogues, models, samples, designs, data (including but not limited to weights, dimensions and finishes), general literature or other information, written or otherwise, furnished by or on behalf of the Company, shall remain the property of the Company. Such information shall be treated as confidential, and shall not be used, disclosed or reproduced by the Buyer, except as required in the course of performance hereunder.

The confidentiality obligations herein shall not extend to any information which, at the time of disclosure, was (i) already known by the Buyer; or (ii) in the public domain through no wrongful act of the Buyer; or (iii) received by the Buyer from a third party who was free to disclose such information.

The parties acknowledge that the provisions in this section are in addition to those rights which the Seller may have under applicable laws and regulations for the protection of trade secrets, copyrights, trade names, and trademarks.

All Trade-marks, Trade-names adopted and used by the Company, and consisting of either word, symbol, pattern, device or design are and remain the exclusive property of the Company or/and its suppliers and may not be used unless expressly stated or agreed in writing and signed on behalf of the Company by the Director of the Company.

## **PRICE**

6. The Company reserves the right to alter the contract price in respect of the Goods by reference to the price ruling at the date of dispatch of the Goods if any variations in the costs of materials and/or labour and/or any other factor shall in the opinion of the Company make such alterations necessary or expedient. Unless otherwise expressly so stated all prices are exclusive of: i) value added tax and tariffs which shall be applied in accordance with the legislation in force at the tax point date; ii) works and installation, iii) insurance costs, iv) freight/transport costs, v) packaging and handing, and vi) all other applicable costs, which costs are to be borne exclusively by the Buyer.

## **TERMS OF PAYMENT**

7. All orders require a twenty-five percent (25%) down payment at the time of order. The amount of the down payment is to be calculated on the order's net value. After the lapse of the first three months of commercial collaboration with the Buyer, the Company may, in the Company's exclusive discretion, relieve that particular Buyer from effecting such down payment.

All the remaining balance (together with value added tax payable thereon) shall be due immediately on the date of delivery. Payments are to be received in the Bank account number of the Company or by cheque, and are to be effected without regard to any equity, set-off or counterclaim.

The Company shall be entitled to interest from the date upon which payment falls due. In such cases interest shall accrue from day to day at the rate of eight percent (8%) *per annum*.

8. In the event that the Buyer fails to fulfil the terms of payment in respect of any invoice the Company may at its sole discretion demand payment of all or any outstanding liabilities whether or not due and/or cancel all or any outstanding orders and/or decline to make further deliveries except upon receipt of cash or satisfactory security or such other terms as the Company shall decide.

## **DELIVERY**

9. (a) Any dates or periods for the delivery of the Goods or any of them are only indicative and non-binding.

Whilst the Company will endeavour to comply with such dates or periods any such dates or periods shall not take effect as a term of the contract or constitute an obligation binding on the Company and in any event but without prejudice to the foregoing time shall not be of the essence for such delivery.

(b) Where the Buyer is to collect goods from the Company, the Company reserves the right to charge for storage if such goods are not collected within seven (7) days after notifying the Buyer that such goods are available for collection. If the goods are not collected by the Buyer within twenty-one (21) days of such notification the Company shall be entitled to suspend further performance of the contract and to treat the contract as being wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated without liability for any loss whether direct or indirect suffered by the Buyer by reason of such termination but without prejudice to any right or remedy available to the Company, including those that are described in the immediately following paragraph.

The Buyer acknowledges that in such cases, i.e. if the Company elects to suspend further performance of the contract due to the fact that goods are not collected by the Buyer within twenty-one (21) days of notification, the minimum amount which is to be construed as a certain, liquid and due debt, payable by the Buyer in favour of the Company, is an amount equivalent of the amount of the down payment paid to the Company (i.e. representing 25% of the order). The Buyer is hereby giving its irrevocable consent to the Company, which in the case described in the immediately preceding sentence, is authorised to withhold and/or appropriate such amount against costs suffered by the Company. For the avoidance of any doubt, it is declared that the Buyer shall not claim back the down-payment and that such withholding/appropriation by the

Company of the down payment amount is without prejudice to the Company's right to claim further costs and/or damages from the Buyer and/or to exercise any and all other rights pertaining to the Company as per contract and/or as per law.

(c) If the Company is prevented from delivering goods at the time provided for delivery by reason of any cause outside its reasonable control (including but not so as to limit the generality of the foregoing fire, explosion, plant breakdown, interference by labour strikes or lock outs or non- availability of transport or materials) then the period for delivery shall be deemed extended accordingly and the Buyer shall have no right to cancel the order/s or terminate the agreements, by reason of such delay.

If the delivery date has been exceeded by four weeks then the Buyer may give notice to the Company to terminate the unfulfilled part of the contract but the Company shall have no liability to the Buyer for any loss or damage arising therefrom or consequential thereon.

(d) The Company shall be entitled to cancel any accepted order or withhold delivery of any goods if the Buyer is in breach of any obligation to the Company whether contractual or otherwise.

(e) The Buyer shall not refuse, prevent or hinder delivery and failure by the Company to effect delivery by reason of any of the aforesaid shall not affect the obligation of the Buyer to pay the full invoice price.

(f) The Company shall be entitled to re-sell all or any goods in respect of which delivery is refused prevented, hindered or cancelled and in the event that the reason for refusing preventing hindering or cancelling delivery subsequently ceases to apply the Company shall only be bound to re-deliver goods subject to the availability of the original or replacement goods and without prejudice to any other right or remedy available to it.

(g) No claim for short delivery of goods or goods damaged in transit can be entertained unless either a receipt is given to the carrier detailing the shortage or damage at the time of delivery or alternatively notification of the shortage or damage is given to the Company within twenty-four (24) hours of the date of delivery in question to the Buyer.

## **PASSING OF RISK**

10. Risk of loss and/or damage to the Goods shall pass to the Buyer:

(a) On delivery to the Buyer or to a third party or carrier nominated by the Buyer to take or accept delivery, or:

(b) Where the Company gives notice to the Buyer that the Goods are available for collection on the expiry of seven (7) days from the date of such notice or on the expiry of the time agreed for collection following service of such notice (if any) whichever is the later or:

(c) If the Buyer or a third party appointed by the Buyer to accept or take delivery of the Goods on the Company tendering delivery of the Goods and the Company shall not subsequently be liable for the safety and/or integrity of the Goods.

## **WARRANTIES AND CLAIMS**

11. (a) The Buyer should satisfy itself, whether by testing samples or otherwise, as to the merchantability, quality, fitness to purpose and compliance with descriptions and/or samples of all goods ordered by it from and/or supplied to it by the Company and shall be deemed and conclusively presumed to have done so.

(b) In terms of Article 1426 of the Civil Code (Chapter 16 of the Laws of Malta), the Company shall not be answerable for latent defects and, in this sense, the Buyer acknowledges that the Company will not in any such case be bound to any such warranty.

(c) Subject to the above, the Company will not be liable for any damage to or deterioration of any goods which may occur after delivery whether the same occurs due to unsuitable storage conditions, inappropriate use, neglect, alteration or accident or to any other cause whatsoever.

(d) Also subject to the above, the Company will not be liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of an opportunity even if the Company had knowledge that such damages or loss might arise or for any indirect, incidental, special or consequential damages or loss howsoever arising including, without limitation breach of contract, negligence, or default.

(e) Strictly without prejudice the above sub-clauses, the liability of the Company to the Buyer shall be and is hereby limited (in respect of any claim) to the invoice value of the Goods as the case may be and under no circumstances shall the Company be in any way further liable to the Buyer.

(f) Buyer may not return the Goods for credit, repairs or replacement without the prior written consent of the Company. All returns must reference a Return Material Authorization Number (RMA) obtained from the Company. All Goods returned to the Company will be held as the Buyer's property. Buyer shall bear the risk of loss and accept responsibility for shipping costs, taxes, export, duty, import duty or other costs related to the return of the Goods to the Company.

(g) All products carry the original manufacturers' international guarantees. These will be indicated by the Company to the Buyer. The Company's sole obligation in this respect is to forward such guarantees to the Buyer and to channel any claim made on such

guarantees to the manufacturer. This obligation is not to be construed to mean that the Company is assuming any responsibility itself on behalf of the manufacturer and in no case shall the Buyer have any right of action or claim against the Company based on the manufacturer's warranty.

## **RESERVATION OF PROPERTY AND RIGHT OF DISPOSAL**

12. (a) Without prejudice to the prevailing nature of Clause 7, it is agreed that even if delivery and/or the passing of risk in the Goods have been effected, or any other provisions of the contract between the Buyer and the Customer in respect of the Goods, until payment by the Buyer in full of (1) the price of the Goods and (2) any other monies payable to the Company in respect of all goods agreed to be sold by the Company to the Buyer:

(I) Delivered Goods shall remain the property of the Company;

(II) The Buyer shall insure such Goods against all normal commercial risks to their full replacement value with an insurance company of repute for the benefit of the Company and the Company shall be entitled to inspect and take copies of such insurance policy and the premium receipts for it upon giving the Buyer not less than seven (7) days notice;

(III) The Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored and protected and shall ensure that they are at all times identifiable as the Company's property;

(b) Until such time as the property in the Goods passes to the Buyer, the Buyer shall, on mere tolerance basis, be entitled to use or otherwise deal with the Goods in the ordinary course of its business provided that any monies received by the Buyer in respect of the Goods shall be held by the Buyer in a fiduciary capacity on behalf of the Company and, if the Company shall by notice so require, the Buyer shall keep such monies in a separate account but without prejudice to the Company's right to trace the same if the Buyer fails to keep such proceeds separate as aforesaid. The Company shall be entitled to inspect and take copies of the statements and other documents relating to any such account upon giving the Buyer not less than seven (7) days notice.

(c) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold or otherwise disposed of by the Buyer) the Company shall be entitled to demand that Buyer ceases forthwith to terminate the Buyer's power to use, resell or otherwise deal with the Goods.

(d) At any time after such termination the Company shall be entitled to require the Buyer to deliver up the Goods to the Company.

(e) In the event of any dispute as to whether any particular goods have been paid for by the Buyer the Buyer shall be deemed not to have paid the Company for goods in possession of the Buyer at any time unless the Buyer can prove to the satisfaction of the Company that payment for such goods has been received by the Company.

## **BREACH**

13. If the Buyer:

(a) Makes default or commits any breach of its obligations to the Company hereunder, or

(b) Is involved in any legal proceedings in which its solvency is in question, or

(c) Being a company presents a petition presented for an application asking for its liquidation and winding-up or convenes a meeting to pass a resolution for voluntary winding-up or an official receiver, liquidator, provisional administrator or special controller is appointed for the Buyer or if it calls a meeting of or enters into any composition or arrangement with its creditors or applies for a Special Recovery Procedure order under the Companies Act (Chapter 386 of the Laws of Malta).

(d) Ceases or threatens to cease to trade then in any such case the Company shall immediately become entitled (without prejudice to its other claims and rights) to suspend further performance of the contract for such time as it shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated.

## **NOTICES**

14. Any written Notice provided for herein to be given to the Company by the Buyer shall be mailed or delivered to Company's address/fax/email stated in the Sales Quotation or to an address and/or person subsequently designated in writing by Company. Likewise any notice to be given to Buyer shall be mailed to or delivered to Buyer at address stated in the Sales Order or to an address/fax/email and/or person subsequently designated in writing by Buyer.

## **INTERPRETATION**

15. In this Agreement, unless the context otherwise requires:

(a) headings and sub-headings are for ease of reference only and will not affect the interpretation of this Agreement;

(b) all references to clauses are references to clauses to this Agreement;

(c) words importing one gender will include the other gender, words in the singular will include the plural, and 'person' will include any individual, partnership, firm, trust, body corporate, corporation, sole agency or unincorporated body of persons or associations;

(d) references to "party" or "parties" means a party or the parties to this Agreement.

## **CHOICE OF LAW AND JURISDICTION**

16. This contract shall be governed by and construed in accordance with Maltese law and the parties hereby irrevocably submit to the exclusive jurisdiction of Maltese courts.

## **BUYER'S ACKNOWLEDGEMENT**

17. The Buyer hereby acknowledges having thoroughly read and understood the present Terms and Conditions, include any Annexes and Amendments thereto, and hereby accepts them without any reservation whatsoever.

Buyer's signature under the first invoice/receipt of goods is proof and acknowledgement of reception of a copy of these "Terms and Conditions" including any Annex and Amendment thereto.

## **SEVERABILITY**

18. Any provisions hereof which are found to be prohibited by law or declared unenforceable by a competent authority shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

## **DATA PROTECTION CLAUSE**

19. In terms of the Data Protection Act (Chapter 440 of the Laws of Malta), the Company will process any data supplied by the Buyer, for all or any of the following:

(I) The proper processing of Buyer's order and requests;

(II) Internal management, research and statistics, systems administration, the development and improvement of our services; and

(III) The promotion of the Company's legitimate commercial interests; and

Relevant data will be disclosed or shared as appropriate with all Buyer's employees and with other third parties if pertinent to any of the purposes listed above.

By signing the first invoice/receipt of goods, the Buyer confirms that it is giving its explicit consent, in terms of the Data Protection Act, for the Company to process the Buyer's information as outlined above.